

## Article 8. Nonconforming Situations

### 16-801 GENERAL POLICY/APPLICABILITY.

- A. **Policy:** It is the general policy of the City to allow uses, buildings and lots that were created legally and in conformance with then-applicable requirements, but that do not conform to the current applicable requirements of the zoning ordinance to continue. However, it is also the policy of the City to bring such uses, buildings and lots into conformance with current regulations as is reasonably practical. The provisions of this Article are intended to recognize the interests of property owners but to discourage the substantial expansion of properties and to preclude the re-establishment of an abandoned use or buildings that has been substantially destroyed.
- B. **Applicability:** This article shall apply to circumstances that became nonconforming by initial adoption of these Chapters, amendment to these Chapters or by annexation. It shall also apply to nonconforming situations that were legal nonconformities under previously applicable ordinances or resolutions and that remain nonconforming under these Chapters, even if the type or extent of nonconformity is different.
- C. **Continuation Permitted:** Any nonconforming use, building or other situation which existed lawfully on the adoption of these Chapters or which becomes nonconforming upon the adoption of any amendment to these Chapters may be continued in accordance with the provisions of this Article. Where two or more provisions of this Article apply, the more restrictive requirement controls.
- D. **Proof of Nonconformancy:** The burden shall be on the landowner or developer to establish entitlement to continuation of nonconforming situations or completion of nonconforming projects.

(Ord. 1859, Sec. 1)

16-802 NONCONFORMING USES OF LAND. The lawful nonconforming use of land not involving a building or where any building is merely incidental to or accessory to the principal use of land, may continue subject to the following requirements:

- A. **Expansion:** A nonconforming use of land may not be expanded beyond the area that it occupied on the date that it became nonconforming.
- B. **Discontinuance:** A nonconforming use of land may not be renewed when the use has been discontinued for six consecutive months. Any subsequent use of land shall conform to the applicable regulations of the zoning district in which the land is located.
- C. **Change of Use:** A nonconforming use of land may not be changed to another use unless the use is permitted in the zoning district in which the land is located.

(Ord. 1859, Sec. 1)

16-803 NONCONFORMING USE OF BUILDINGS OR SITES. The lawful nonconforming use of a building or site may continue subject to the following requirements:

- A. **Expansion:**
  - 1. **Expansion within an existing building:** A nonconforming use may be expanded throughout a building it occupies a portion thereof.
  - 2. **Expansion of the physical area of a building or site:** A building located on a nonconforming property may be expanded by 25% or less without bringing the site into compliance with current regulations. If a site contains more than one building, the 25% expansion permitted shall apply to the total floor area of all

building located on the site. For purposes of this article, "site" shall mean all lots and/or parcels under ownership or control of the person proposing the expansion contiguous to the property containing the buildings to be expanded. Such conditions that may be nonconforming include, but are not limited to, lack of screening, lack of landscaping, inadequate surface or curbing of parking areas or drives, discharge of surface water, noncompliance with one or more performance standards or other similar conditions. The Community Development Director shall have the authority to determine what improvements would be required to bring a property fully or substantially into compliance as part of new construction, alteration or expansion which exceeds 25% of the area of the existing improvements on the property.

- B. **Discontinuance:** A nonconforming use of a building or site may not be re-established if it is discontinued for a period of six consecutive months. Any subsequent use of a building or site shall conform to the applicable regulations of the zoning district in which the property is located.
- C. **Change of Use:** A nonconforming use of a building or site may not be changed to another use unless the use is permitted in the zoning district in which the land is located. (Ord. 1859, Sec. 1)

16-804 NONCONFORMING BUILDINGS. A lawful, existing nonconforming building may remain subject to the following requirements:

- A. **Expansion:** A nonconforming building may not be expanded so as to increase the degree of nonconformity. Other expansions may occur, provided, that such additions comply with the requirements of these chapters and applicable Zoning and Building Codes.
- B. **Remodeling:** Remodeling of a building within an existing footprint is permitted, provided that the remodeling does not increase the degree of nonconformity and the applicable Building Codes are met.
- C. **Replacement and Repairs:** A nonconforming building may be replaced or restored within six months if it is destroyed by not more than 50% of its appraised valuation through fire, explosion, act of God or the public enemy. When such restoration becomes involved in litigation, the time required for such litigation shall not be counted as part of the six months allowed for reconstruction, and nothing in this Chapter shall be taken to prevent the continued occupancy or use of such building or part thereof existing at the time of such partial destruction. Any building so damaged by more than 50 percent of its appraised value may not be rebuilt, repaired or used unless it is made to conform to all regulations for building in the district in which it is located. (Ord. 1859, Sec. 1)

16-805 COMPLETION OF CONSTRUCTION. Nonconforming projects which were issued a building permit or approved in writing by staff before the effective date of an amendment to an ordinance affecting the project may be completed in accordance with the terms of their permits or approvals, so long as those permits or approvals were validly issued and remain unrevoked and unexpired. (Ord. 1859, Sec. 1)

16-806 VARIANCES PERMITTED. Except as otherwise provided herein, the Board of Zoning Appeals may grant variances consistent with the intent of this Article, in accordance with the provisions of Article 16 of this Chapter. (Ord. 1859, Sec. 1)